IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5195 of 2006
With
CRIMINAL MISC.APPLICATION NO. 7965 of 2006
in
CRIMINAL MISC. APPLICATION NO. 5195 of 2006
And
CRIMINAL MISC. APPLICATION NO. 7979 of 2006
In
CRIMINAL MISC. APPLICATION NO. 5195 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

HARISHCHANDRA BHAGWANBHAI PATEL & 8 - Applicants
Versus
THE STATE OF GUJARAT & 1 - Respondents

==========

Appearance : IN CR.MA: 5195 of 2006

MR MB GANDHI for Applicants : 1 - 9.MR CHINMAY M GANDHI for Applicants : 1 - 3,8 - 9.
MR. I.M. PANDYA, LD. APP for Respondent: 1,
MR PRANAV G DESAI for Respondent : 2.

APPEARANCE IN: CR.MA: 7965 of 2006
MR PRANAV G DESAI for Applicant
MR MB GANDHI for Respondents: 1-9
MR I.M. PANDYA, LD. APP for Respondent no. 10

APPEARANCE IN: CR.MA. 7979 OF 2006
MR. N.D. NANAVATI WITH NR. D.C. SEJPAL FOR APPLICANT
MR. M.B. GANDHI FOR RESPONDENTS NO. 1-9
MR. I.M. PANDYA FOR RESPONDNT NO.10
MR. PRAVAN G. DESAI FOR RESPONDENT NO.11

==========

CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 24/08/2006

ORAL JUDGMENT

1. Rule. Learned counsel for the respective parties waives notice of service of rule. With the consent of learned counsels for the parties, rule is fixed forthwith.

2. Criminal Misc. Application No. 5195 of 2006 is preferred by the original accused in a complaint registered before Navapura Police Station, Baroda, being C.R. No: I-53/2006 for the offences under Section 467, 468, 471, 420 r/w Section 120-B and 114 of Indian Penal Code; for quashing the same under Section 482 of Criminal Procedure Code.

Criminal Misc. Application No. 7965 in Criminal Misc. Application No. 5195 of 2006 is preferred by Baroda Municipal Corporation seeking vacation of the interim relief granted by this Court (Coram: D.N. Patel, J) on 20/7/2006.

Criminal Misc. Application No. 7979 of 2006 in Criminal Misc. Application No. 5195 of 2006 is preferred by the applicant Subhashchandra Biharilal Bhagat seeking leave to be impleaded as party respondent in Criminal Misc. Application No. 5195 of 2006.

3. As it is stated herein above, there is consensus among the learned counsel for the parties that the main matter itself be heard for final disposal. Accordingly the same is taken for final disposal.

4. Brief facts leading to filing the present application deserve to be set out as under:

5. On 1.05.2006 the complainant, Town Development Officer, Vadodara Municipal Corporation lodged a complaint being I.C.R.No. 53 of 2006 with the Navarapura Police Station, Vadodara against the present petitioners for committing offences punishable under sections 467, 468, 471, 420 read with section 120B and 114 of the Indian Penal Code. Its alleged in the said complaint that the Vadodara Municipal Corporation received an application dated 25.04.2006 from one Ms. Malvika Bhagat through her Power of Attorney Shri Subhash B. Bhagat and others,

alleging that as per the decrees of competent civil courts one Subhash Chunilal and other 19 persons were declared owners and occupiers of land bearing survey no. 364 of village Tarsali against the original owner Shri Haresh Chandra Bhagvandas Patel (the Applicant No.1 herein) in the year 1984 itself. The original land owner Harishchandra Bhagvandas Patel (Applicant no.1 herein) filed a Declaration Form under Section 6 of the Urban Land Ceiling Act in the year 1976 which came to be disposed off by the Competent Authority vide order dated 24.09.1985 accepting the contentions of the said Shri Harishchandra Bhagvandas Patel (Applicant no.1 herein) that the subject land was not his holding but it was holding of those 20 persons as the land of original survey no. 364 came to be reconstituted into Final Plot No.318 admeasuring 25302 Square meters, of Town Planning Scheme No.18 of Vadodara Municipal Corporation, whereas according to the Decrees of the competent civil courts, the said 20 persons were declared owner of the land admeasuring 29,798 square meters land of survey no. 364. It is also alleged in the application that the competent authority of Vadodara Town Planning Branch of Vadodara Municipal Corporation under T.P. Proceedings ordered deletion of

the name of the said Shri Harishchandra Bhagvandas Patel (Applicant no.1 herein) and incorporated those 20 persons in the records. The subject land was developed after obtaining valid permission. Total 153+5= 158 persons have purchased the same and about 153 bungalows stand on the said land since 1989-1990. The remaining 5 plots were purchased in the year 1989 by duly executed Registered Sale deeds by the persons who approached the corporation vide application dated 25.04.2005. The said Harischandra Bhagvandas Patel (Applicant no.1) filed Civil Suit No. 434 of 2005 against said five landowners for permanent injunction and in support of his claim of ownership on the said land produced a forged certified copy of Form-B showing the name of the Applicant no.1 without bracket as if he was still owner and occupier of the subject land. The Applicant no.1 got one more civil suit, being Civil Suit No. 334 of 2005, filed by one of his accomplices and produced therein the said forged certified copy of the Form-B indicating that Applicant no.1 is still owner of the subject land. The affected defendants called the officer of the Corporation with the original record in the Court and on 09.08.2005 and examined him to establish that copies of Form –B produced by Shri Harishbhai B Patel (Applicant no.1

herein) and Shri Babubhai Parikh were not true copies of the original record and that the name of Shri Harishchandra B Patel was shown into bracket in original record, meaning thereby he did not own or occupy the land in question. Its also alleged in the application dated 25.04.2005 by the said five applicants that the forged certified copy purported to have been received on 27.04.2005 from the Town Planning Branch of Vadodara Municipal Corporation by or on behalf of the present Applicant No.1 on making payment for receiving Certified Copy of Form No.B was never issued by the Corporation. On inquiring with the Corporation vide their application dated 17.12.2005 about any such issuance, the Corporation has replied vide its letter dated Nil of December 2005 that it did not receive any application dated 27.04.2005 nor did they issue any money receipt under the entry at serial no. 1771 of their register. In fact the Entry No. 1771 dated 28.11.2005 in their Register pertained to an application made by some Madhuben Padhiyar for getting copy of the Nomination. The said forged document came to be produced in Civil Suit No. 334 of 2005 filed by one Shri Babubhai Parikh, in whose favour the present Applicant no.1 has made Agreement to Sale (Banakhat), for specific performance wherein he has joined the

petitioner no.1 as party defendant along with the other real contesting defendants. The Applicant No.1 was obviously helping the plaintiff.

6. On 9.08.2005 one Jayesh D. Jaiswal, Head Draftsman, Town Development Branch of Vadodara Municipal Corporation was examined in Civil Suit No. 334 of 2005 and he produced the relevant extract of the original record showing that the Applicant no.1’s name was in bracketed portion meaning thereby he was no more owner or occupier of the land in question.

7. The Applicant no.1 has also filed a writ petition being Special Civil Application No. 4231 of 2006 in this Court seeking declaration that the petitioner is still owner of the remaining land admeasuring 4499 square meters and sought direction to the respondent Vadodara Municipal Corporation for removing the bracket around his name in record of the corporation in respect of the subject land. The Applicant no.1 has produced on record of this application a copy of the Spl.C.A. 4231 of 2006 and its annexure including the application filed by one of the purchaser of the land way back on 20.04.1989 for incorporating the 20 persons’ names as

owners instead of the present Applicant no.1 in the Record of Town Planning Office of Vadodara Municipal Corporation. The said application came to be disposed of vide Order dated 21.12.1989 in Case no. 131 of 1989 by the competent authority who, incorporated 20 persons' names as the landowners and occupiers in place of the present Applicant no.1 in the record and Form No.B maintained by the Vadodara Municipal Corporation.

8. Thereafter the present Applicants have preferred the present application for quashing the impugned complaint. It is stated in the memo of the petition that petitioners 1 to 7 are the owners of the subject land and the petitioner no.8 is the Power Of attorney holder of the petitioner no.1. and the petitioner no. 9 has signed the document creating rights in the favour of the persons as witness. Its mentioned in the memo of this petition that despite their repeated requests for earmarking and allotting remaining portion of 4499 square meters of the original area of Survey no.364 the Corporation did not do anything hence ultimately the petitioners sold away this same to some buyer, who in turn filed Civil Suit No. 334 of 2005 against the present petitioners and others and the present petitioners were also constrained to

prefer the civil suit no. 434 of 2005 against the five persons for permanent injunction. The present applicant no. 1 has filed the Special Application no. 4231 of 2006 in the month of Fabruary 2006 against the State Of Gujarat and the Vadodara Municipal Corporation for earmarking the land and removing the bracket made against his name in the record.

9. Shri Gandhi, Learned Counsel for the applicants has submitted that looking to the averments made in the complainant the entire case falls in the realm of Civil Disputes and, therefore, the criminal complaint is nothing but a device to exert undue pressure upon the petitioners. The complaint therefore needs to be quashed. Shri Gandhi invited this Court’s attention to the relevant extract of village form no. 7/12 and other documents attached to this application for establishing the plea it being civil disputes not capable of being permitted to be used as lever in the hands of the complainants and others for cowering down the petitioners in the pending civil suits between the parties. The Certified copy of Form-B showing the name of the petitioner no.1 without bracket in respect of the subject land which is itself being suit land and when the competent civil

court is already seized with the matter the criminal proceedings would amount to abuse of the process.

10. Shri Gandhi, Learned Counsel for the applicants has submitted that the Certified Copy of Form-B is produced as it was received from the office. If while making the copy drawing of bracket might have been inadvertently omitted by the concerned employee responsible for making it, then, only not mentioning of the petitioner no.1's name in bracket in itself cannot be termed to be an offence of forgery.

11. Shri Gandhi, Learned Counsel for the applicants has submitted that for fulfilling the essential ingredient of offence of forgery and cheating it is necessary that the document alleged to have been forged and used for cheating must be "valuable security" as defined under section 30 of the IPC 1872. The Document in question i.e. Form-B containing the name of the petitioner without bracket cannot really be treated such a valuable security as to attract the charge of cheating and forgery punishable under sections 476, 468, 471 and 420 of IPC. In fact document, Form-B can not be said to be a document affecting final rights of the parties. Shri.

Gandhi relied upon the provisions of sections 46 and 47 of the Gujarat Town Planning and Urban Development Act 1976 (herein after referred to as “Town Planning Act”) and submitted that disputes regarding ownership of land and civil court’s jurisdiction to adjudicate the same irrespective of any entry made in the record of the Town Planning Scheme shows that the Form B cannot be treated to be conclusive evidence affecting rights of the parties pending adjudication in civil court. In view of this it is submitted that the Document in question namely Form-B can not be said to be final document so as to vitally affect the rights of the parties requiring invoking of rigors of provisions of punishment for the offence of cheating and forgery against the petitioners.

12. Shri Gandhi, Learned Counsel for the applicants has submitted that in any case the substance of allegation made in the application dated 25.04.2005 to the Corporation based whereon the impugned complaint came to be filed is that the forged certified copy of Form-B is produced before the Court in civil proceedings and therefore, the Civil Court before whom such certified copy is produced shall alone have right and

jurisdiction to initiate any proceedings only after coming to the conclusion that requirements of section 340 of Cr.P.C. 1973 are fully met. Thus by filing complainant before the Police under Section 154 of CrPC would amount to by passing the mandatory provisions of Section 195 and Section 340 of CrPC and hence the impugned complaint deserves to be quashed.

13. Shri Gandhi, Learned Counsel for the applicants has submitted that in any event when the dispute is at large before the Civil Court in respect of the subject land and when the petition being Spl.CA 4231 of 2006 is pending before this Court, it was not open to the complainant and other aggrieved parties to resort to filing of criminal complaint without awaiting the final verdict from the competent courts in the pending disputes. This amounts to abuse of process hence its required to be quashed.

14. Shri Desai, learned Counsel for the respondent No.2 the complainant and Shri N.D. Nanavati, learned Senior Counsel appearing with Shri D.C. Sejpal, learned Counsel for the applicant in Criminal Application no.7979 of 2006 have resisted the present application for quashing on the following grounds.

15. They have invited this Court’s attention to the facts that the present Applicant no.1 had in fact way back in 1976 filed a Declaration Form under section 6 of the Urban Land Ceiling Act 1976 that the land bearing survey no.364 of village Tarsali may not be treated as his holding and it should be treated as holding of the 20 persons. The said Form came to be decided vide order dated 24.09.1985. It is mentioned in the said order that these 20 persons were in actual possession since last more than 12 years before ULC Act came into force and the competent Civil Courts had also passed decrees declaring these 20 persons to be the owners and occupiers of the land against the original owner Shri Harishchandra B. Patel (the prsent Applicant no.1) since 21-02-1984. The present applicant No.1 has filed Special Civil Application being Spl.CA 4231 of 2006 copy whereof is placed on record of this application at Annexure C. In this Spl.CA 4231 of 2006 the present applicant no.1 has produced a copy of the application dated 20.04.1989 made by one of the original 20 persons who were declared to be the owners and occupiers of the said land against the present applicant no.1, by the competent civil court and who were also declared by the present applicant no.1 to be the owners and

occupiers in the proceedings and orders deciding the Form No.6 under ULC dated 24.09.1985, seeking incorporation of their names in the record in place of the present applicant no.1 as owners and occupiers of the subject land, which came to be allowed in their favour vide order dated 21.12.1989 incorporating the 20 names in place of the present applicant no.1 as owner and occupier of the subject land. The present applicant no.1 has produced the copy of application-dated 20.04.1989 and copy of the order dated 21.12.1989 made thereon as Annexure H and G respectively in Spl.CA 4231 of 2006. These facts unequivocally show that present applicant no.1’s name was deleted and it was therefore kept in bracket so as to indicate that he was not owner or occupier of the subject land. The production of Form B containing the name of the applicant no.1 without bracket would implied that he is still owner and occupier of the subject land. The Counsels for the opponents have also invited this Court’s attention to the communication dated Nil. Of December 2005 issued by the Vadodara Municipal Corporation to their application dated 17.12.2005 inquiring as to whether Corporation issued any Certified Copy of record of Final Plot No. 318 in TP Scheme No.18 on 27.04.2005

under the Money Receipt entry whereof is made at Serial No. 1771 in their Register. The Reply of Corporation vide their letter dated Nil, of December 2005 denying issuance of any Certified Copy of the record of subject land and indicating that the entry no. 1771 was for application dated 28.11.2005 received from one Smt.Madhuben Padhiyar for obtaining copy of some Nomination go to show that the Copy of Form No.B produced by the applicant No.1 was forged one. They have also relied upon a decision of the Apex Court in case of IQBAL SINGH MARWAH AND ANOTHER Vs. MEENAKSHI MARWAH AND ANOTHER reported in (2005) 4 SUPREME COURT CASES 370 in support of their contention that when the forged document is produced before the court then the complaint filed by the person aggrieved without intervention of the court wherein it is produced is absolutely just and maintainable. The Counsels for the opponents have submitted that the present applicants have attempted to justify their right over the subject land with the help of the forged certified copy of the Form-B. In view of this the present application deserves to be dismissed.

16.This Court has heard learned counsels for the parties and perused the documents on the record. It appears that investigation in the

matter is not completed due to interim relief granted by this Court (Coram: Mr. Justice D.N. Patel) on 20.07.2006 staying investigation till final disposal of this petition. This petition is therefore essentially for quashing the F.I.R I- C.R. 53 of 2006 registered at Navapura Police Station against the present applicants for commission of offences punishable under sections 467, 468, 471 420 read with section 120B and 114 of the Indian Penal Code and for quashing its investigation. Therefore this Court is to examine as to whether the applicants have made out a case for quashing the investigation in respect of serious offences punishable under sections 467, 468, 471 420 read with section 120B and 114 of the Indian Penal Code at this stage.

17. Before embarking upon examining the plea for quashing the impugned F.I.R and investigation the following facts and circumstances need to be set out as it emerge from the record of this matter This Court hasten to add here that following may not be construed as findings by this court so as to adversely affect either party in its pending civil litigations. It is culled out only for examining the plea for quashing the impugned FIR and investigation therein.

17.1 Its alleged that the five persons on whose behalf the application dated 25.04.2005 was made before the Corporation derived their rights and title upon the subject land from some of the persons belong to original group of 20 in whose favour the competent civil court has passed decree declaring them landowners and occupiers against the claim of the present petitioner no.1 and others way back in 1984 itself.

17.2 The present Applicant No.1 himself alleged to have filed Declaration Form under Section 6 of the ULC Act way back in 1976 which came to be decided vide order dated 24.09.1985 accepting his plea that the subject land may not be treated to be his holding but be treated to be that of those 20 persons in whose favour there was civil court’s decree.

17.3 The applicant no.1 has produced on record of this application two documents originally forming part of record of Spl.CA 4231 of 2006 filed by him. Namely an application dated 20.04.1989 made by one of those 20 decree holders or their nominee for incorporating their names in the record in place of the original landowner’s name i.e.

the present applicant no.1 herein. And order dated 21.12.1989 passed by the competent authority allowing the same and incorporating names of those 20 persons in the record in place of the present applicant no.1.

17.4 The applicant no.1 has filed petition being Spl.C.A no.4231 of 2006 praying that the proceedings in case no.131 and order dated 21.12.1989 passed therein incorporating the names of 20 persons and bracketing the name of petitioner was illegal and bad in law. The applicant No.1 has made specific prayer in the said writ petition that respondent Municipal Corporation be directed to remove the bracket around his name and show the petitioner as the owner of the said land in Final Plot no. 318.

17.5. The document purported to be certified copy of Form.B produced in the civil suits no. 434/2005 and 334/2005 by the petitioner and his accomplice respectively do not show any bracket around the name of the present applicant. Besides the names of 20 persons are not mentioned there as they are there in the original record.

17.6 The reverse side of the Certified Copy produced by the petitioner no.1 contains the

following items, namely 1. True Copy of the B Form; 2. Date of Application : 27.04.2005; 3. S.R.No.: 1771 2005-2006; 4. Fees Charged for the copy : Rs. 30; 5. Date of preparation of the Certified Copy : 27.04.2005; 6. Copy should be given to applicant presents himself personally and Date:27.04.2005; 7. Date of the Copy given: 27.04.2005. It also bears signature at two places of Head Clerk Record Department Vadodara Municipal Corporation and its seal. In response to the query of the contesting party, Corporation replied vide letter dated Nil of December 2005 that apropos her application dated 17.12.2005 containing query as to whether the Corporation has issued any Certified Copy of Form-B on 27.04.2005 in respect of Final Plot no.318 of TP Scheme no.18, under Entry no.1771 in Search Register on receiving fees thereof. The Reply dated Nil of December 2005 in unequivocal terms states that no such Certified Copy was issued on 27.04.2005 and the entry no.1771 referred in their application was pertaining to an application dated 28.11.2005 made by one Smt. Madhuben Padhiyar for obtaining Copy of some Nomination. The investigating officer while resisting application for bail produced this document before the trial court.

17.7 The investigation is still not completed. Therefore in absence of the Police Report under Section 173 of the Cr.PC this Court is required to decide the plea of quashing the impugned F.I.R and further investigation only on the basis of the record produced before this Court by the petitioners. In other words it is the plea of the petitioners that the very investigation in respect of F.I.R. I-C.R. No.53 of 2006 deserves to be quashed only on the basis and strength of the material on record.

18. Against the aforesaid backdrop, this Court is to examine the plea for quashing the impugned FIR and investigation. Shri Gandhi’s first and fifth contentions are inter-spliced and therefore deserve to be dealt with together. The substance of allegation is that applicants forged a copy of B Form in respect of the record of Final plot no.318 of T.P. Scheme 18 of Vadodara Municipal Corporation for establishing their rights over the subject land as other applicants are contracting parties in respect of land in question and interested directly in the title of the land in question. Mere pendency of Civil Suits and Writ Petition in respect of subject land in itself cannot be sufficient to clothe the offence of forgery as civil

disputes taking it away from the clutches of offence of forgery and cheating. In fact in most of the offence of cheating and forgery an element of property is always present. In the instant case the charge is that in order to establish the title over the subject land Certified Copy of Form B is forged containing the name of the petitioner no.1 without bracket to imply that he is still owner and occupier of the subject land and it did not contain all the 20 names of the persons whose names in fact exist in the original record Form B, this coupled with the letter dated December 2005 issued by the Corporation that no such Certified Copy had been issued under Entry at serial no.1771 on 27.04.2005 and the entry no.1771 dated 28.11.2005 is in fact pertaining to an application made by one Madhuben Padhiyar for obtaining copy in of Nomination would show that it cannot be said to be merely civil disputes so as to quash the impugned FIR and the investigation at its threshold. The Apex Court has held in case of Rajesh Bajaj Vs. State NTC of Delhi reported in AIR 1999 S.C. pg. 1216 that even if some of the ingredient of office are left out in the complaint the same can not be quashed. In another case of KAMLADEVI AGRAWAL VS. STATE OF W.B. reported in AIR 2001 S.C. page 3846 it is observed that mere pendency of Civil

Suits alone can not be the ground for quashing the criminal proceedings. In fact in case of M. KRISHNAN VS. VIJAY SINGH, reported in AIR 2001 S.C. 3014, the Apex Court has held that even if the proceedings in respect of th very forged documents are pending in other courts that in itself cannot be the ground for quashing the criminal proceedings.

19. The second contention of Shri Gandhi, that mere omission of putting bracket around the name of the petitioner no.1 in itself cannot be said to be intentional so as to create a forged document so as to defraud some one, is not tenable. The aforesaid facts and circumstances amply show that this cannot be termed to be an inadvertent mistake by concerned employee responsible for preparing and issuing Certified Copy of the Record. The name without bracket implies that the petitioner no.1 is still owner and occupier of the subject land coupled with the fact that the documents contains serial no. 1771 dated 27.04.2005 which is not tallying with the record of the corporation shows that it was not an inadvertent mistake as it sought to be made out.

20. It is also contended on behalf of the petitioners that looking to the provisions of

sections 46 and 47 of the Gujarat Town Planning and Urban Development Act 1976 any disputes with regard to the title of land of Final Plot can also be decided by the competent civil court. The Town Planning Act does not oust the jurisdiction of the competent civil court in deciding disputes in respect of titles of final plots also. In view of this it is contended that copy of Form B can not be said to be any valuable documents really affecting rights of the parties to the civil suits. This contention is untenable in eye of law. The aforesaid facts would go to show that the copy of Form B was produced for specific purpose of giving away impression that the petitioner No.1 and through him others were deriving valid interest in the subject land. In this view of the matter it can not be said that rights of the original owners and persons deriving interest there-under were not likely to be adversely affected. Hence this contention also deserves to be rejected and is accordingly rejected.

21. The contention, that as the document was produced in the court proceedings and hence impugned FIR and resultant investigation was not permissible in view of the expressed provisions of section 195 and 340 of the Code

of Criminal procedure 1973, is absolutely misconceived and deserve to be rejected. The Apex Court has in case of Iqbal Singh Marwah (Supra) in terms observed as under:-

" 10. The scheme of the statutory provision may now be examined. Broadly, Section 195 CrPC deals with three distinct categories of offences which have been described in clauses (a), (b) (i) and (b) (ii) and they relate to (1) contempt of lawful authority of public servants, (2) offecnes agaisnt public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur in Chapter X IPC and the heading of the Chapter is - "Of Contempts of the Lawful Authority of Public Servants". These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b) (i) refers to offences in Chapter XI IPC which is headed as - "Of False Evidence and Offences Agaisnt Public Justice". The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a court of justice or before a public servant who is bound or authorised by law to receive such declaration, and also to some

other offences which have a direct correlation with the proceedings in a court of justice (Section 205 and 211 IPC). This being the scheme of two provisions or clauses of Section 195 viz., that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression “when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court” occurring in clause (b) (ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in court, does not appear to be in tune with clause (a) (i) and (b) (i) and consequently with the scheme of Section 195 CrPC. This indicates that clause (b) (ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any court.

11. Section 195 (1) mandates a complaint in writing to the court for taking cognizance of the offences enumerated in clause (b) (i) and (b) (ii) thereof. Sections 340 and 341 CrPC which occur in Chapter XXVI give the procedure for filing of the complaint and other matters connected therewith. The heading of this Chapter is - “Provisions as to Offences Affecting the Administration of Justice”. Though, as a general rule, the language employed in a heading can not be used to give a different effect to clear words of the section where there can not be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a state may be looked to explain its enactments, but as affording a better key to the constructions of the sections which follow them than might be afforded by a mere preamble. The fact that the procedure for filing a complaint by court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer to the legislative intent that the offence committed

should be of such type which directly affects the administration of justice viz., which is committed after the document is produced or given in evidence in court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in court can not, strictly spaking, be said to be an offence affecting the administration of justice. “

Thus the contention of the petitioners that in light of Section 195 and 340 the impugned complaint and investigation deserve to be quashed is bereft of any merits and therefore deserves to be rejected.

22. The Apex Court has in case of M. Narayandas Vs. State of Karnataka reported in AIR 2004 SC 555 observed that even if the case wherein the offences alleged may fall under the purview of Section 195 and 340 of CrPC then also the bar therein may come into play only at the stage of taking cognizance of the offence and the investigation therein can not be quashed on that ground.

23. There are allegations against all the petitioners. The petitioner no.1 to 7, are the contracting parties whereas petitioner no.8 is power of attorney holder of the

petitioner no.1, and petitioner no.9 was witness to the document executed between the parties. Thus all the petitioners are shown to have vital interest in the subject land in one way or the other. Thus the impugned complaint and investigation need not be quashed.

24.As it is stated herein above the discussion is only for the purpose of examining pleas of quashing the proceedings pending investigation and this observation shall have no bearing upon the civil proceedings between the parties. In light of the Apex Court decisions in AIR 1992 SC 1930 and (2004) 4 SCC 6919 State of MP Vs. Awdh Kishan Gupta when the allegation disclose prima facie a strong case for investigation then this Court would not be justified in quashing the same under Section 482 of the Code. The facts and circumstances attending the present case sufficiently indicate that petitioners have not made out any case for interfering with the investigation at this stage. Quashing of the same in face of such serious charges and in light of the material on record, would rather amount to miscarriage of justice detrimental to very cause of justice.

25.Hence this petition deserves to be dismissed

and is accordingly dismissed. Rule discharged.

26. In light of dismissal of the main petition being Criminal Misc. Application No. 5195 of 2006 there shall be no order in Criminal Misc. Application No. 7965 of 2006 and Criminal Misc. Application No. 7979 of 2006 as they would not survive and accordingly they stand disposed of.

27. Shri. Gandhi, learned counsel for the petitioners submits that interim relief granted earlier vide order dated 20/07/2006 may be extended for the period of six weeks. Shri. Nanavati, learned senior counsel for the private applicant in Criminal Misc. Application No. 7979 of 2006 and Shri. Desai, learned counsel for respondent no.2 oppose the same. This Court is of the view that as the interim relief is continuing since 20/07/2006, let it be continued for further period of four weeks from the date of receipt of this order. Accordingly the interim relief granted vide order dated 20/07/2006 shall continue upto 9/10/2006.

[S.R. BRAHMBHATT, J.]

/vgn